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Message Text

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EB/OT/STA - M. NAYOR (SUBSTANCE)
---------- 027788
R 132107Z FEB 75
FM SECSTATE WASHDC
TO ALL OECD CAPITALS

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E.O. 11652: N/A
TAGS: SENV, EEC, OECD
SUBJECT: EC COMMISSION PAPER ON THE POLLUTER-PAYS PRINCIPLE (PPP)
REF: (A) COMMISSION MEMO TO MEMBER STATES (SEC(74)4264), SUBJECT: COMMUNITY APPROACH TO STATE AIDS IN ENVIRONMENTAL MATTERS; (B) EC BRUSSELS 0260; (C) EC BRUSSELS 445

1. SUMMARY: FOLLOWING ARE OUR COMMENTS ON REF. (A). THESE ARE INTENDED FOR THE INFORMATION AND BACKGROUND OF ADDRESSEES AND FOR USE WITH HOST GOVERNMENTS AS SPECIFIED BELOW.
2. ACTION REQUESTED: USEC SHOULD PRESENT THESE VIEWS IN-FORMALLY AND ORALLY TO THE EC COMMISSION, BEARING IN MIND THAT DOCUMENT TO OUR KNOWLEDGE HAS NOT YET BEEN PUBLISHED
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AS OFFICIAL EC COMMISSION PAPER. FYI: WE ARE GIVING SOME

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THOUGHT TO INCLUDING THE SUBJECT ON THE AGENDA FOR THE NEXT US-EC BILATERAL ENVIRONMENTAL MEETING SCHEDULED FOR MAY. END FYI. OTHER ADDRESSEES MAY DRAW UPON COMMENTS BELOW IF THE SUBJECT OF COMMISSION POSITION RE PPP COMES UP IN DISCUSSION WITH HOST GOVERNMENTS. IN DRAWING ON THIS MATERIAL, POSTS SHOULD MAKE CLEAR THAT THEY ARE CONVEYING INFORMAL, CANDID, USG VIEWS ON THE DOCUMENT; THAT WE RECOGNIZE THAT OECD MEMBERS WILL WISH TO COMPARE THEIR PROSPECTIVE PRACTICES IN RELATION TO PPP THROUGH PERIODIC CONSULTATIONS IN THE OECD; AND THAT USG DOES NOT PRESUME TO BE THE ULTIMATE ARBITER OF WHAT CONSTITUTES A REASONABLE IN-

TERPRETATION OF PPP. PRINCIPAL POINT TO BE MADE, HOWEVER, IS THAT USG BELIEVES OECD MEMBER STATES SHOULD CONTINUE TO BE GUIDED BY OECD GUIDING PRINCIPLES RE PPP AS CLARIFIED BY RECENT ACTION PROPOSAL CONSIDERED AT NOVEMBER MINISTERIAL MEETING. ALL ADDRESSEES SHOULD CONTINUE TO FOLLOW THIS ISSUE AND TO REPORT SIGNIFICANT DEVELOPMENTS.

3. FYI. REF (B) REPORTED VIEWS OF EC COMMISSION OFFICIALS CONCERNING GENESIS OF SUBJECT MEMORANDUM. HOWEVER, IN SEVERAL INFORMAL CONVERSATIONS, UK AND NETHERLANDS REPS TO OECD SUBCOMMITTEE OF ECONOMIC EXPERTS ON ENVIRONMENT (PARIS, JAN. 22 - 24) HAD DIFFERENT PERSPECTIVE OF THE EVENTS.

4. THEY STATED THAT THE EC MEMBER COUNTRIES WERE NOT REPEAT NOT CONSULTED IN ADVANCE OF THE ISSUANCE OF THE COMMISSION MEMORANDUM. MOREOVER, THEY BELIEVE THE TIMING OF THE MEMORANDUM WAS A DELIBERATE ATTEMPT ON THE PART OF THOSE IN THE COMMISSION WHO ARE NOT PLEASED WITH THE WAY PPP HAS EVOLVED TO TRY TO PRESENT A DIFFERENT PERSPECTIVE FROM THEN IMPENDING ACTIONS OF BOTH THE EC COUNCIL OF MINISTERS AND THE OECD ENVIRONMENT COMMITTEE.

5. ACCORDING TO THE SAME REPS AND A UK OFFICIAL VISITED IN LONDON, NEITHER THE UK NOR THE NETHERLANDS (NOR IRELAND, ACCORDING TO THE UK) IS PREPARED TO ACCEPT THE COMMISSION MEMORANDUM AS THE FINAL WORD ON THE ISSUE. INDEED, THE NETHERLANDS REPORTEDLY STRONGLY BELIEVES THAT LIMITED OFFICIAL USE

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THE EC COMMISSION OVERSTEPPED ITS BOUNDS IN PREPARING ITS PAPER. END FYI.

6. FOLLOWING ARE OUR MORE SPECIFIC THOUGHTS ON THE SUBSTANCE OF THE DOCUMENT. WHILE THE COMMISSION MEMORANDUM IS EVIDENTLY DESIGNED TO ACHIEVE SOME UNIFORMITY WITHIN THE COMMUNITY, AND IS REPLETE WITH ADVOCACY OF THE PPP, WE BELIEVE IT ARGUES THAT TRANSITIONAL EXCEPTIONS TO THE PPP

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ARE IN FACT DESIRABLE AND THUS APPEARS TO INVITE THE MEMBER STATES TO ADOPT TRANSITIONAL AIDS, IN A NON-RESTRICTIVE FASHION, WITHIN THE COMMUNITY. THE RECENT OECD RECOMMENDATION ON CRITERIA FOR ASSISTANCE UNDER THE PPP, IN CONTRAST, STRONGLY DISCOURAGES STATE AIDS ALTHOUGH RECOGNIZING THAT EXCEPTIONS MAY BE WARRANTED IN COMPELLING CIRCUMSTANCES.

7. WE ARE SOMEWHAT CONCERNED ABOUT THE GENERAL APPROACH TAKEN TO STATE AIDS AND THE HIGH CEILING SET OUT IN THE DOCUMENT (UP TO 45 PER CENT NET AFTER TAX SUBSIDY PERMISSIBLE IN 1975/76, UP TO 30 PER CENT IN 1977/78, ETC.) RATHER THAN THE SELECTIVE APPROACH OF REQUIRING MEMBERS

TO JUSTIFY THEIR AIDS ON A CASE-BY-CASE BASIS, AS PROVIDED BY THE OECD. WE ALSO ARE CONCERNED THAT THE USE OF ACROSS-THE-BOARD PERCENTAGE FIGURES MIGHT CONCEIVABLY INVITE ALL THE MEMBER STATES TO PROVIDE AID UP TO THAT LEVEL, EVEN THOUGH AT THE PRESENT TIME ONLY ONE MEMBER STATE (BELGIUM) APPEARS TO HAVE EXPRESSED THE INTENTION TO AVAIL ITSELF OF A 45 PER CENT LEVEL OF AID IN THE ONE FIELD OF WATER POLLUTION.

8. SOME OTHER FORMULATIONS IN THE DOCUMENT RAISE QUESTIONS IN OUR MINDS. THESE INCLUDE THE FOLLOWING:

A. THE PHRASE ON PAGE 9, "ALTHOUGH INITIALLY APPLIED IN A WATERED-DOWN FORM, THE POLLUTER-PAYS PRINCIPLE REMAINS THE OBJECTIVE," IS TO OUR MIND UNFORTUNATE.

B. THE FIRST PARAGRAPH ON PAGE 4 STATES THAT "COMPETITION AND TRADE WITHIN THE COMMUNITY ARE SERIOUSLY DISTORTED" DUE TO DIFFERING POLLUTION-CONTROL REQUIREMENTS. WHILE LIMITED OFFICIAL USE

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THERE IS NO EXPLICIT REFERENCE TO DISTORTION OF TRADE WITH COUNTRIES OUTSIDE THE COMMUNITY, THIS RAISES THE QUESTION OF WHETHER THE COMMISSION BELIEVES THAT TRADE WITH SUCH COUNTRIES IS BEING SIMILARLY DISTORTED.

C. WE WONDER EXACTLY HOW AIDS FOR NEW PLANT INVESTMENTS WILL BE TREATED AND ARE FRANKLY PUZZLED AS TO WHAT THE CURRENT INTENT MAY BE. THE ALLUSION TO NEW PLANTS ON PAGE 11, SUBPARAGRAPH (A), APPEARS FAIRLY LOOSE IN TERMINOLOGY AND IS FURTHER CONFUSED BY THE STATEMENT ON THE LAST PAGE THAT "NEW PLANT" WILL HAVE TO BE SET UP TO MEET ENVIRONMENTAL STANDARDS WITHOUT STATE AIDS. ON THE OTHER HAND, THE LAST PAGE SUGGESTS THAT THE EQUALIZATION OF INTERNATIONAL COMPETITIVE STATUS MAY BE THE DRIVING FACTOR IN JUSTIFYING AID TO NEW PLANTS. WE WOULD BE INTERESTED

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IN CLARIFICATION FROM THE COMMUNITY AS TO HOW IT RECONCILES THIS LANGUAGE WITH PARAGRAPH 13 OF THE OECD GUIDING PRINCIPLES OF MAY 26, 1972, WHICH STATES, INTER ALIA, THAT DIFFERENCES IN ENVIORNMENTAL POLICIES SHOULD NOT LEAD TO IMPORT LEVIES, EXPORT REBATES, OR "MEASURES HAVING AN EQUIVALENT EFFECT."

9. AS NOTED (PARA 8B, ABOVE) DOCUMENT MAKES NO REFERENCE TO ASSURING THAT EXCEPTIONS TO PPP SHOULD NOT SERVE TO DISTORT TRADE WITH NATIONS OUTSIDE COMMUNITY. WE ASSUME THIS OMISSION STEMS FROM FACT THAT DOCUMENT FOCUSES ON INTERNAL PRACTICES, BUT DESIRE CORROBORATION THAT EC STILL REGARDS THIS OBJECTIVE TO BE A FUNDAMENTAL CRITERION IN DETERMINING WHETHER ANY AIDS ARE ACCEPTABLE.

10. IT WOULD BE INTERESTING TO RECEIVE A FURTHER ELABORATION OF THE COMMISSION'S THINKING OF THE GENERAL CONCEPT EXPRESSED IN THE DOCUMENT, THAT EXCEPTIONS TO THE PPP WILL, IN SOME WAY, SPEED UP ADHERENCE TO THIS SAME PRINCIPLE. WE CAN FORESEE CIRCUMSTANCES WHERE THIS COULD BE TRUE BUT ALSO BELIEVE THERE COULD BE INSTANCES WHERE A SUBSIDY SCHEME, ONCE ADOPTED, WOULD PROVE EXTREMELY DIFFICULT TO DISLODGE.

11. THE COMMISSION OBVIOUSLY ALSO INTENDS TO ENDORSE SOME AIDS AFTER THE INITIAL TRANSITION PERIOD, BUT WE
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HAVE SUBSTANTIAL DIFFICULTY IN GAUGING HOW LOOSE OR RESTRICTIVE IT INTENDS TO BE IN THE PROCESS. WE FIND THE LANGUAGE TO BE VERY VAGUE AND OPEN-ENDED. SHOULD AIDS BE PROPOSED AFTER THE INITIAL TRANSITION PERIOD, DUE TO THE IMPOSITION OF NEW ENVIRONMENTAL CONSTRAINTS, WE BELIEVE THAT THEY SHOULD BE GRANTED VERY SPARINGLY AND UNDER THE TERMS ENDORSED BY ALL OF THE 24 OECD MEMBER STATES AND THAT THEY IN TURN SHOULD BE SELECTIVE AND TRANSITIONAL IN NATURE. AS IT IS, THE EC COMMISSION PAPER HAS THE FLAVOR OF ENDORSING THE CONCEPT THAT SOME FORM OF SUBSIDIES SHOULD NOW BE CONTEMPLATED IN PERPETUITY. INGERSOLL

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